

BOARD OF ENVIRONMENTAL REVIEW AGENDA ITEM

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.B.2.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality rules to incorporate changes to 40 CFR 70.6(c)(5)(iii)(B) and 70.6(c)(5)(iii)(C) regarding Title V operating permit annual compliance certifications and whether the reporting facility's compliance was continuous or intermittent during the reporting period.

List of Affected Rules: This rulemaking would amend ARM 17.8.1213.

Affected Parties Summary: The proposed rule amendment could affect all facilities regulated under the Department's Title V air quality operating permit program.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendment to ARM 17.8.1213.

Background: This action is in response to the U.S. Environmental Protection Agency's (EPA's) direct final action noticed in the Federal Register, 68 FR 38517, amending 40 CFR 70.6(c)(5)(iii)(B) and 70.6(c)(5)(iii)(C). It is necessary for the state to adopt the revisions to the federal regulations to maintain the state's delegation of authority from EPA and the state's primacy to enforce the Title V operating permit program.

ARM 17.8.1213, as it currently reads, requires responsible officials in their annual certifications to identify each term and/or condition of the permit, the method(s) or other means used to identify the status of compliance, and whether the methods used provide continuous or intermittent data. The responsible official identifies the status of compliance with each permit term (whether the facility was in or out of compliance). The current language incorporates federal regulation language that was adopted in 1997 but later was challenged in a court action filed by the Natural Resources Defense Council, Inc. (NRDC) and the Appalachian Power Company et al. (industry).

The proposed amendments would adopt a federal regulation change clarifying the annual compliance certification requirements and returning to language adopted in a 1992 federal rulemaking. Under the proposed amendments, ARM 17.8.1213 would require responsible officials to identify each term and/or condition of the permit and whether or not compliance with that term or condition was continuous or intermittent during the reporting period.

The proposed amendments would provide more information to the Department and the public, as the status of compliance would be more directly described. Knowledge of the method and the type of data it produces is secondary to the description of compliance. The Department has requested that facilities explain their interpretations of the terms "continuous" and "intermittent" to clarify those interpretations in annual compliance certifications under the current rule and would continue to request such information under the proposed amendments.

Hearing Information: The Department recommends that the Board appoint a presiding officer,

initiate rulemaking, and conduct a public hearing to take comments on the proposed amendments.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board grant the Department's request to initiate rulemaking and schedule a public hearing, as described in the attached draft notice of public hearing.

ENCLOSURE: The following information is attached to this summary:

1. Draft Notice of Public Hearing on Proposed Amendment.